IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.506 OF 1985

Bank of India
having its office at
Express Towers,
Bombay 21 and its
Bombay Metropolitan Zonal Office
at Phiroze Jeejeeebhoy Tower at
Dalal Street, Bombay 400 023
and its Electric House branch at
Electric House, Ormiston Road,
Bombay 400 039 ..Plaintiff

versus

1.M/s.Kaaf Workshop,
a proprietorship concern,
having office at Amena Manzil,
205/207, Abdul Rehman Street,
Bombay 400 003.

2. Khairunnisha S. Bandukwala,
proprietress of M/s.

Kaaf Workshop, res.at
Prince Court,
Maryweather Road,
Colaba, Bombay 400 039.

3. Salim Saggad Bandukwala,
res. at Prince Court,
Maryweather Road,
Colaba, Bombay 400 039. ..Defendants

Mr.Behram Shroff i/b. Little & Co. for the Plaintiff.

None for the Defendants.

Coram : S.R.Sathe, J.

Dated : 23rd Nov., 2005

JUDGMENT

1. The plaintiff-nationalised bank has filed this suit against the defendant Nos.1 to 3 for recovery of the amount advanced to defendant Nos.1 and 2 under two different cash credit facilities.

2. The plaintiffs case in brief is that the defendant No.2 is the proprietor of defendant No.1. At the request of the defendants, the plaintiff granted to defendant Nos.1 and 2 cash credit hypothecation facility to the limit of Rs.1,25,000/- and in consideration of the same, the defendant Nos.1 and 2 executed demand promissory note of Rs.1,25,000/- dated December 11, 1973, letter of continuing security, letter of lien and set off and declaration that the defendant Nos.1 and 2 have not created any encumbrance on the hypothecated property. The defendant No.3 stood as guarantor to defendant Nos.1 and 2 and executed letter of guarantee dated December 11, 1973. Accordingly, payment was made under the said credit facility by the plaintiffs. However, in April 1975 at the request of the defendants, the plaintiff increased the said facility from Rs.1,25,000/- to Rs.1,75,000/- and in consideration of the same the defendant Nos.1 and 2 executed necessary documents on April 29, 1975. The defendant No.3 also stood as guarantor for the said enhanced facility. The defendant Nos.1 and 2 also executed deed of charge and hypothecation of book debts in favour of the plaintiff.

3. Again in the year 1977, at the request of the defendants, plaintiff granted additional facility for a sum of Rs,.30,000/- to the defendants and they executed necessary documents. In April 1978 at the request of the defendants, the facility was enhanced from Rs.1,75,00/- to Rs.2,75,000/- and for that purpose the defendant Nos.1 and 2 executed necessary demand promissory note, letter of continuing security and letter of undertaking and the defendant No.3 executed letter of guarantee, thereby he guaranteed the repayment of the enhanced amount of Rs.2,75,000/-. The defendant Nos.1 and 2 operated the said facility from time-to-time and the plaintiff-bank debited the monies withdrawn by the defendant No.1 to his account. Whenever the defendant No.2 repaid the amount, credit was given by the bank for the said amount.

4. In March, 1979 at the request of the defendants, the plaintiff-bank granted new facility of cash credit against the hypothecation of the book debts with the limit of Rs.75,000/- and for that purpose, the defendant Nos.1 and 2 executed necessary documents on March 23, 1979 and defendant No.3 executed deed of guarantee. The defendant Nos.1 and 2 availed both the facilities granted to

them, and withdrew the amounts under the said accounts from time-to-time. In spite of repeated demands, the defendant did not clear the dues under the above-mentioned two credit facilities. Ultimately, plaintiffs issued notices through advocate on October 3, 1984 to the defendants and called upon them to clear the dues under the two credit facilities granted to the defendants. On receipt of the said notice, the defendants by their letter dated November 10, 1984 did not deny the liability but contended that the plaintiffs action of recalling the advance would lead to closure of their industries and, therefore, requested the plaintiff to withdraw the notice. As the amount of Rs.2,13,295.2 ps was due from the defendants under the first facility and Rs.59,644.61 ps. under the second facility, the plaintiff filed the present suit against the defendants, as according to the plaintiffs they were jointly and severally liable to pay the said amount.

5. The defendant Nos.1 and 2 filed their written statement and admitted that the documents mentioned by the plaintiffs are signed by them. However, contended that the plaintiff obtained signatures of the defendants on blank documents.

They also contended that the entries in the account shown by the plaintiff are not correct. They also contended that they have never given any acknowledgement to the plaintiff and their signatures were obtained on blank forms. There are no valid acknowledgments executed by the defendants and the suit is barred by law of limitation. The defendants also contended that they have in fact filed a suit against the plaintiff-bank for an amount of Rs.25,00,000/- for damages. Hence, on all these grounds defendant Nos.1 and 2 prayed for dismissal of the suit.

6. The defendant No.3 filed his written statement opposing the suit claim. He contended that by virtue of Section 128 read with Section 143 of the Contract Act, he is discharged as surety. According to him, when signatures were obtained on letters of guarantee and document in that behalf, those documents were blank and as such the plaintiff is not entitled to claim any amount from him. He further contended that he has never executed acknowledgment for continuing the guarantee and the plaintiffs have filled blank forms behind the back of defendant and as such the plaintiffs are not entitled to rely on such acknowledgment letters.

He, therefore, contended that the suit is barred by law of limitation and the same be dismissed.

7. On these pleadings, followings issues are framed by S.U.Kamdar, J. on June 21, 2005. I have given my findings as mentioned against the same.

ISSUES	FINDINGS
1. Whether the plaintiffs prove that there is due and payable by the defendants to the plaintiffs a sum of Rs.2,13,295.02 with interest thereon at the rate of Rs.17.5% per annum under the Cash Credit Facility as shown in Exhibit CC to the plaint ?	Yes.
2. Whether the Plaintiffs prove that there is due and payable by the Defendants to the Plaintiffs a sum of Rs.59,644.61 under the Book Debt Facility with interest thereon at the rate of 17.5% per annum as per particulars annexed to the plaint as Exhibit DD ?	Yes.

3.	Whether the Defendants prove that the suit is barred by law of limitation ?	No.
4.	Whether the Defendants prove that the suit is not maintainable ?	No.
5.	Whether the Defendants prove that the documents are not properly stamped and not duly executed and thus the plaintiffs cannot rely on them ?	No.
6.	Whether the Defendant No.3 proves that he has been discharged surety and that there is no waiver as per provisions of section 128 to 143 of Contract Act as stated in paragraph 3 of the Written Statement ?	No.
7.	What Order ?	As per the reasons stated below.

8. In order to prove the suit claim, plaintiffs witness Shantaram Hardikar, an employee of the

plaintiff-bank has filed his affidavit of evidence and also produced compilation of original documents. He has stated on oath that as per the request of the defendants, first credit facility was granted for Rs.1,25,000/- and for that defendant Nos.1 and 2 executed documents at Exhibit A, B and C and the defendant No.3 executed letter of guarantee at Exhibit D. He has also pointed out that as to how the said limit was increased from time to time and necessary documents at Exhibit E,F,G,H,I,J,K,L, were executed by the defendants. He has also proved the documents executed on May 25, 1978 whereby the earlier facility was enhanced from Rs.1,25,000/- to Rs.2,75,000/-. He has produced the statement of accounts of both the credit facilities at Exhibit CC and DD in the compilation of documents and stated that the amounts standing at the foot of the said accounts are due from the defendants. It is pertinent to note that all this evidence of plaintiff has gone unchallenged in as much as the defendants remained absent on the date of hearing and did not ask for cross-examination of the plaintiff. Though the defendant raised several contentions. In order to support the said contentions, they have not adduced any evidence. It is needless to say that in the instant case it is

not the contention of defendant Nos.1 and 2 that they had never requested the plaintiff to advance loan and the plaintiff had not advanced the loan or that they did not receive any money from the plaintiff-bank. They have even admitted that the documents in question are signed by them, but it is their contention that when their signatures were obtained on the said documents, the documents were not written but blank and the same were filled in by the plaintiff behind the back of the defendants. If really it would have been so, then the defendants would have taken action against the plaintiff long back but they have not done so. Not only that but even in this suit, besides, merely taking contention about the same in written statement, they have not done anything. They have not adduced any evidence to support their contentions. In the circumstances, when it appears that the plaintiff-bank has maintained the statement of account in due course of business, then having regard to all the facts and circumstances as well as the provisions of the Banker's Books Evidence Act 1981, due weightage shall have to be give to the evidence adduced by the plaintiff from which it is very clear that the plaintiff-bank has advanced the amount as stated by its witness and the amounts standing at the foot of

the defendants account i.e. CC and DD were due from the defendants to plaintiff.

9. From the acknowledgment letters which are executed from time-to-time and in particular the last acknowledgment letter which was executed on August 6, 1984 and the fact that suit is filed on February 15, 1985, it is very clear that the present suit is definitely in time and not barred by law of limitation. The plaintiff has proved that the total amount of Rs.2,72,939.63 ps. is due from the defendants. Hence, I pass the following order :

ORDER

The defendant Nos.1 to 3 to pay the plaintiff-bank Rs.2,72,939.63 ps. and future interest thereon at the rate of 9% per annum from the date of the suit till realisation of the amount.

The Defendants to pay plaintiff the costs of this suit and bear their own.

(S.R.Sathe, J.)